

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs November 18, 2008

RICKY JEROME COONROD v. STATE OF TENNESSEE

Appeal from the Criminal Court for Hamilton County
No. 244635, 255445 Barry A. Steelman, Judge

No. E2008-00425-CCA-R3-CD - Filed February 9, 2009

On October 27, 2005, the defendant, Ricky Jerome Coonrod, pleaded guilty to one count of robbery, *see* T.C.A. § 39-13-401 (2002), and one count of possession of marijuana for resale, *see* T.C.A. § 39-17-417 (2002). He was sentenced to six years of intensive probation for the robbery conviction followed by one year of unsupervised probation for the drug conviction. On April 11, 2007, the defendant's probation officer filed a probation violation report citing numerous violations. The trial court held a probation revocation hearing and found that the defendant violated his probation. The trial court revoked the defendant's probation and ordered him to serve his full sentences. The defendant appeals, arguing that the trial court erred in "compelling" him to defend his probation violation "while negotiating other matters" and that the trial court acted contrary to the evidence presented in the probation revocation hearing. Discerning no error, we affirm the judgments of the trial court.

Tenn. R. App. P. 3; Judgments of the Criminal Court Affirmed

THOMAS T. WOODALL, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR. and ROBERT W. WEDEMEYER, JJ., joined.

Jason D. Demastus, Chattanooga, Tennessee, for the appellant, Ricky Jerome Coonrod.

Robert E. Cooper, Jr., Attorney General and Reporter; Deshea Dulany, Assistant Attorney General; William H. Cox, III, District Attorney General; and C. Matthew Rogers, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On April 11, 2007, Bill Day of the Tennessee Board of Probation and Parole filed a report alleging that the defendant had violated several provisions of his intensive probation sentence. He cited thirteen violations, including failure to report a March 6, 2007 arrest, failure to maintain lawful employment, failure to support his child, failure to report to his probation office, failure to comply with his curfew, failure to pay probation fees and court costs, failure to comply with a directive to attend drug treatment, and testing positive for use of marijuana. In a February 4, 2008 probation

revocation hearing, Mr. Day described the defendant as an “[u]nsatisfactory” probationer. He stated that the defendant “absconded intensive probation” and had not reported to his office since October 24, 2006. He testified that the defendant called him on November 5, 2006, and that the defendant “said he was scared, that he had heard there were warrants out on him for child support, and that people had been telling lies on him and he was scared.” Mr. Day reported that the defendant “tested positive on a drug screen . . . the last time he had seen [him].” He directed the defendant to seek drug treatment; however, the defendant did not attend any drug counseling.

Mr. Day further testified that the defendant held two jobs while on probation, but he lost both jobs “because he wouldn’t show up to work.” While on probation, the defendant was assigned to stay at his grandmother’s home with a 6:00 p.m. curfew. Mr. Day testified that on two occasions he visited his grandmother’s house after 6:00 p.m. and the defendant was not home. He said, “His grandmother said he had been living there on and off and she really didn’t know where he was at . . .” Mr. Day also testified that the defendant was arrested on March 6, 2007; however, he did not report this to the probation office.

Although defense counsel admitted that the defendant violated his probation, the defendant testified that he “was going through a lot” when he violated his probation. The defendant explained, “I lost two of my kids, and I had a whole lot of family problems.” He stated that he attempted to attend drug treatment but could not afford it. He also testified that he “kept trying to seek employment” and that his trouble with keeping employment was largely due to “transportation issues.” On cross-examination, the defendant admitted to using illegal drugs while on probation.

After hearing the testimony, the trial court found that the defendant violated the conditions of his probation, explaining that the defendant had not made any “legitimate effort” to comply with his probation. The trial court noted the defendant’s failures to notify his probation officer of his arrest, to report to his probation office, to abide by his curfew, and to stay at his assigned residence. The trial court found that, although Mr. Day gave the defendant opportunities with employment-seeking and drug treatment programs, he “chose not to cooperate in those programs.” The trial court noted that the defendant had used illegal drugs while on probation for a violent crime. It stated, “As a result of [the defendant’s] behavior, he has proven that he’s not a good candidate for alternative sentencing.” On February 4, 2008, the trial court entered amended judgments ordering the defendant to serve his full sentences for an effective total of seven years’ incarceration.

The defendant filed a timely notice of appeal on February 26, 2008. Although his brief concedes his probation violation, he argues on appeal that the trial court erred by “compelling the [defendant] to defend his probation violation while negotiating other pending matters.” He further argues that “[t]he findings of the trial court were contrary to the evidence at the . . . probation violation hearing.”

The defendant first argues that “[b]ecause the trial court forced the [defendant] to face immediate determination of his probation violation matters, the [defendant] was denied his opportunity to continue settlement talks with the State regarding both the revocation and certain other charges which remain before the Hamilton County Criminal Court.” However, he cites no legal authority to support this proposition. The State argues that the defendant “waived this issue

by failing to support his argument with citation to authorities.” See Tenn. R. Crim. App. 10(b). We agree. The defendant cites no rule, statute, or case law that illuminates why the trial court erred by conducting a probation revocation hearing.

The State further argues that “[t]he defendant has also waived this issue for failure to raise a contemporaneous objection.” See Tenn. R. App. P. 36(a). Defense counsel told the trial court, “[I]n terms of revocation, I believe we’ve been discussing that in terms of a global settlement for all the charges at one time, so I’m not really prepared to do that right now unless the Court just feels it necessary.” The trial court determined that it would hold the probation revocation hearing and allotted defense counsel time to prepare. Nothing in the record indicates that the defendant made any objection to the hearing, and the defendant conceded the violation during the hearing. Because defense counsel agreed to proceed to the probation revocation hearing without objection, we agree with the State that the defendant has waived review of this issue.

The defendant next argues that the findings of the trial court were contrary to the evidence adduced at the probation revocation hearing. A trial court may revoke a sentence of probation upon a finding by a preponderance of the evidence that the defendant has violated the conditions of his release. T.C.A. § 40-35-311(e) (2006); *Stamps v. State*, 614 S.W.2d 71, 73 (Tenn. Crim. App. 1980). A revocation will be upheld absent a showing that the trial court abused its discretion. *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). In order to establish that the trial court has abused its discretion, the defendant must show that there is no substantial evidence to support the determination that he violated his probation. *Id.* (citing *State v. Grear*, 568 S.W.2d 285, 286 (Tenn. 1978); *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980)). Relief will be granted only when “the trial court’s logic and reasoning was improper when viewed in light of the factual circumstances and relevant legal principles involved.” *State v. Shaffer*, 45 S.W.3d 553, 555 (Tenn. 2001) (quoting *State v. Moore*, 6 S.W.3d 235, 242 (Tenn. 1999)). Upon finding a violation, the trial court may “revoke the probation and suspension of sentence and cause the defendant to commence the execution of the judgment as originally entered.” T.C.A. § 40-35-311(e). Furthermore, when probation is revoked, “the original judgment so rendered by the trial judge shall be in full force and effect from the date of the revocation of such suspension.” *Id.* § 40-35-310. The trial judge retains the discretionary authority to order the defendant to serve the original sentence. See *State v. Duke*, 902 S.W.2d 424, 427 (Tenn. Crim. App. 1995).

The defendant, both in his probation revocation hearing and in his appellate brief, concedes violating his probation. The evidence adduced at his hearing suggests that the defendant failed to maintain steady employment and failed to abide by his curfew or stay at his designated residence. The defendant admitted to using illegal drugs while on probation, and he failed to seek drug treatment as directed by Mr. Day. The defendant failed to report his March 6, 2007 arrest to his probation office. Further, he altogether stopped reporting to Mr. Day, who testified that the defendant had absconded from his probation. This evidence provides more than enough support for the trial court’s decision to revoke the defendant’s probation.

In light of the foregoing analysis, we discern no error in the judgments of the trial court and affirm the revocation of the defendant’s probation.

THOMAS T. WOODALL, JUDGE